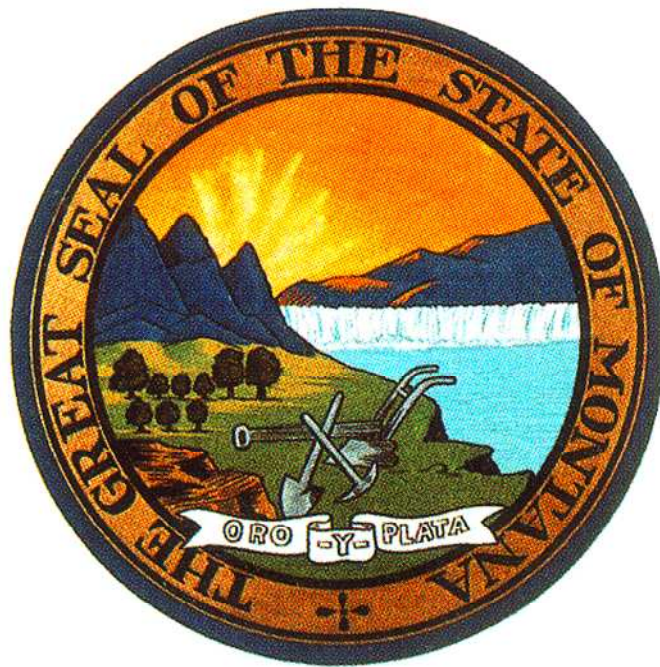


# **STATE OF MONTANA BOARD OF PARDONS AND PAROLE**



## **BIENNIAL REPORT January 2011**

**STATE OF MONTANA**  
**BOARD OF PARDONS AND PAROLE**  
**2011 Biennial Report**

**Governor Brian Schweitzer**



**Craig Thomas**  
**Executive Director**



**Michael McKee**  
**Board Chair**

**REPORT PREPARED BY:**

**Craig Thomas, Executive Director**  
**Christine Slaughter, Parole Board Analyst**  
**Julie Thomas, Senior Parole Board Analyst**

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## BOARD OF PARDONS AND PAROLE GOALS, OBJECTIVES, AND DUTIES

### MISSION STATEMENT

The Board of Pardons and Parole, as part of the criminal justice process, serves all Montana citizens by administering a flexible system of punishment, which fully protects society. All employees and members of the Board of Pardons and Parole are committed to securing the effective application of and improvements to the clemency and release system as well as of the laws upon which they are based. The parole process is administered in an effective, humane, safe, and just fashion.

### VISION STATEMENT

The Montana Board of Pardons and Parole envisions a parole and pardon system that promotes fair and consistent decisions based on public safety, victim concerns, successful inmate re-entry and sensible use of state resources.

### STATUTORY AUTHORITY

- 2-15-121, MCA: Defines the administrative attachment of the Board of Pardons and Parole.
- 2-15-124, MCA: Define the requirements of quasi-judicial boards.
- 2-15-Part 23, MCA: Establishes the Board of Pardons and Parole and defines the composition, terms, appointments, allocation, and quasi-judicial status, and compensation of the Board.
- 46-18-Part 1, MCA: Establishes state correctional policy and preliminary procedures.
- 46-23-Part 1, MCA: Establishes and defines the general provisions of the Board of Pardons and Parole.
- 46-23-Part 2, MCA: Establishes the general provisions for granting parole and defines the authority and responsibilities of the Board of Pardons and Parole.
- 46-23-Part 3, MCA: Establishes and defines the conditions, authorities, and responsibilities of the Board of Pardons and Parole for Executive Clemency.
- 46-23-Part 10, MCA: Establishes and defines the conditions, authority, and responsibilities for supervision and revocation.
- 10 FTE Executive Director  
Parole Board Analysts (5)  
Administrative Support (4)  
Citizen Board Members (7)

### 2011 BIENNIUM BUDGET REQUESTS

<b>Present Law</b>	<b>FY 2012</b>	<b>FY 2013</b>
Parole Board Member Compensation	\$6,700	\$6,700
<b><u>Total Requests</u></b>	<b>\$6,700</b>	<b>\$6,700</b>

## **BOARD OF PARDONS AND PAROLE - 10.0 FTE**

### **EXECUTIVE DIRECTOR (Craig Thomas)**

- Directs the daily operation of the Board of Pardons and Parole
- Represents the Board in matters of policy, interdepartmental cooperation, and communications with political and judicial bodies
- Oversees all matters of personnel, budget, and distribution of work

### **SENIOR PAROLE BOARD ANALYST (Julie Thomas)**

- Assumes duties of Executive Director in his absence
- Gathers and analyzes information and makes recommendations to the Board on inmate release risk
- Victim Services Coordinator
- Prepares parole reports and makes release recommendations

### **PAROLE BOARD ANALYST (Fern Osler – Billings Office)**

- Responsible for Montana Women's Prison, Billings Pre-Release Centers and Dawson County Correctional Center
- A member of pre-release and initial classification committees
- Prepares parole reports and makes release recommendations
- Responsible for the Pre-Parole Program
- Serves legal notice to all Parole Violators
- Schedules victims and witnesses to provide testimony at Parole hearings

### **PAROLE BOARD ANALYST (Christine Slaughter)**

- A member of pre-release and initial classification committees
- Responsible for BOPP Information System
- Prepares parole reports and makes release recommendations
- Responsible for the Pre-Parole Program

### **PAROLE BOARD ANALYST (Brian Callarman)**

- Responsible for the Pre-Parole Program
- A member of pre-release and initial classification committees
- Prepares parole reports and makes release recommendations

### **PAROLE BOARD ANALYST (John Cameron-Great Falls office)**

- Responsible for the Crossroads Correctional Center, Great Falls Regional Prison, and Great Falls Transition Center
- Responsible for the Pre-Parole program
- Prepares parole reports and makes release recommendations
- Serves legal notice to all Parole Violators
- A member of the pre-release screening committee
- Schedules victims and witnesses to provide testimony at Parole hearings

### **ADMINISTRATIVE SPECIALIST (Cathy Leaver)**

- Organizes the Parole Board hearing data
- Records Parole Board dispositions
- Processes reports regarding parole and executive clemency
- Distributes all mail
- Schedules victims and witnesses to provide testimony at Parole hearings

### **ADMINISTRATIVE ASSISTANT (Lisa Wirth)**

- Prepares placement investigations and release documents
- Prepares correspondence and reports
- Maintains Board confidential files and records dispositions

### **ADMINISTRATIVE SUPPORT (Dotsie Lucier)**

- Answers telephone calls and processes all mail
- Files pertinent material in inmate files as necessary

### **ADMINISTRATIVE SUPPORT (Michelle Oliver)**

- Responsible for the management of over 2,500 inmate files
- Files pertinent material in inmate files as necessary

## FUNDAMENTALS

The Montana State Board of Pardons and Parole is composed of seven members. Each member is appointed by the Governor for staggered four year terms subject to confirmation by the State Senate. The Governor appoints the Chair in accordance with State law. The Vice-Chair is elected in an executive session by the members.

The Board was created by legislative action in 1955. There has been some form of parole within Montana since 1889. In 1979, 1995, and 2003, the addition of auxiliary members was provided by the legislature.

The Board is part of the Executive Branch of State government and is attached to the Department of Corrections for administrative purposes only. The Board performs quasi-judicial and policy-making functions independently of that Department.

### DEFINITIONS:

"Board" – the Board of Pardons and Parole as authorized in 2-15-2302 and 46-23-104, MCA.

"Capital Offense" – an offense for which the District Court imposed the death penalty.

"Conditional Release" – the process by which eligible inmates sentenced to the Department of Corrections may be released from a correctional facility to serve their sentences in the community by a decision of the Department of Corrections Administrators.

"Controlling Sentence" – the sentence(s) that, based on a District Court Judgment, requires the longest period of time served to parole eligibility.

"Dead Time" – the period of time from the date a parole violation warrant is issued to the date a violator is arrested on the warrant and the determination whether this time should be counted as time under the term. This also includes time served in another state for a crime committed on parole.

"Department" – the Department of Corrections as authorized in 2-15-230, MCA.

"Designed Capacity" – the maximum average daily inmate population of a correctional institution as established by legislative appropriation.

"Discharge" – the release from custody upon completion of a term. *Flat discharge* is the release without a period of supervision to follow. *Discharge balance suspended* is the release with a period of probation to follow.

"Good Time Allowance" – number of days awarded by the Department of Corrections which operate as a credit on the inmate's sentence. (Repealed, effective January 1997).

"Hearing" – the personal appearance of an inmate before the Board for release consideration, Executive Clemency, revocation, or rescission.

"Inmate/Prisoner/Offender" – any person sentenced by a State District Court to a term of confinement in a State correctional institution or program.

"Maximum Time" – those sentences or terms that invoke the 17½-year parole eligibility rule; *no inmate shall serve more than 17½ years to parole eligibility on a time sentence* (eliminated by the 1995 Legislature).

"Parole" – the release of an inmate into the community prior to the completion of a sentence subject to the orders of the Board and the supervision of the Department.

"Parole Certificate" – the document signed by the Board Chairman and Executive Director authorizing the release from confinement to parole.

"Parole Eligibility" – the earliest possible date a person may be released from confinement to parole supervision.

"Rescission" – an action of the Board that annuls or voids a prior release disposition.

"Review" – the informal administrative process conducted by a hearing panel via teleconference that entails a paper review to consider the progress and conduct of an inmate and to determine if further consideration is warranted.

"Revocation" – an action by the Board to consider taking away a previously granted parole after probable cause has been determined that a parolee had violated the rule(s) of parole.

"Rules" – the conditions, limitations, and restrictions of parole supervision.

"Sentence" – the penalty imposed by a particular District Court for a specific felony offense.

"Commencement of Consecutive Sentence" – to begin service of a consecutive sentence (sentence to follow) which was imposed after Board action and for crimes committed in prison, while on parole, or on furlough. Commencement is calculated for parole eligibility purposes only.

"Term" – the total period of time for which an inmate was ordered to serve in a State correctional institution or program.

"Victim" – a person who suffers loss of property, bodily injury, or death as a result of: the commission of an offense; the good faith effort to prevent the commission of an offense; the good faith effort to apprehend a person reasonably suspected of committing an offense; the estate of the deceased or incapacitated victim or a member of the immediate family of a homicide victim; a governmental entity that suffers loss of property as a result of the commission of an offense in this state; or an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss. A victim does not include a person who is accountable for the crime arising from the same transaction.



## PARAMOUNT OBJECTIVES OF THE BOARD

1. The primary objective of the Board is to carefully review each eligible prisoner nearing the end of a period of incarceration set by the court. Parole may be granted when, in the Board's opinion, there is a reasonable probability that the prisoner can be released without detriment to the inmate or community.
2. To make every feasible effort to bring about the rehabilitation of those inmates incarcerated or released.
3. To allow, when requested, a victim to present a statement concerning the effects of the crime on the victim or family including, but not limited to, their opinion on release of an offender.
4. To return promptly to custody offenders who are unable or unwilling to adjust to parole supervision and violate conditions of their release.
5. To protect society by not releasing inmates shown to be a menace to society, except a possible release of an inmate who would soon be discharged without supervision at the end of an inmate's sentence and it is thought better to return the inmate to society under strict supervision.
6. To recommend pardons and/or commutation of sentences to the governor for those individuals considered appropriate for this extraordinary privilege.
7. To approve grants of conditional discharges from supervision and set conditions of such.

### **PAROLE: A FLEXIBLE SYSTEM OF REHABILITATION AND PUNISHMENT**

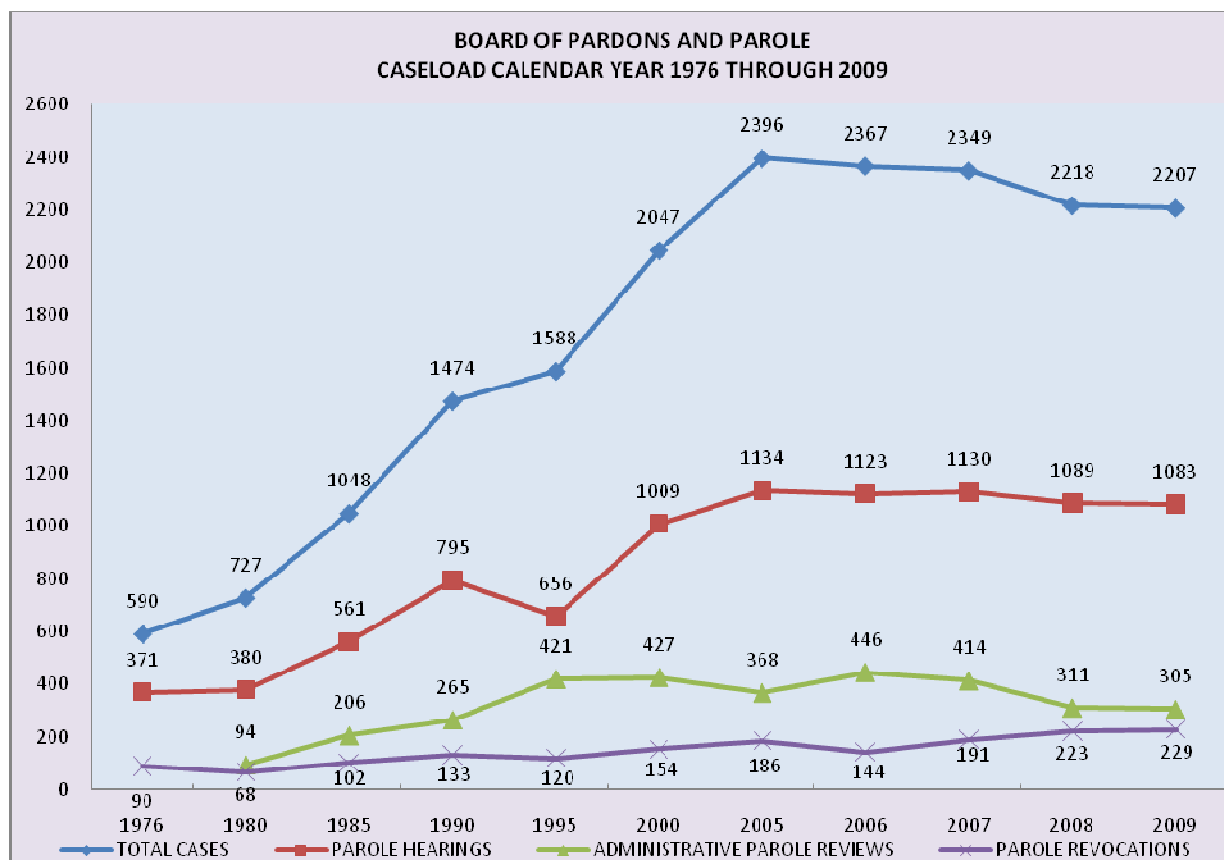
Parole pertains to **how** punishment is administered, not **how much** punishment is administered. A parole system mandates **earned** release; a system without parole means **automatic** release. The courts and legislature set the minimum and maximum amount of prison time to be served. The current sentencing structure is a flexible system for punishing offenders and protecting the public.

An offender is required to serve 25% of the sentence entirely in custody. By setting a sentence considering parole eligibility established by law, the Judge can ensure a period of incarceration that he or she feels is appropriate for the punishment of the offender and the safety of the community.

Once an offender becomes parole eligible, the remaining time on the term can be served either in custody or in the community, depending upon the severity of the crime and risk presented by the offender. By denying parole the Board can significantly lengthen the time served for dangerous offenders. The Board has the advantage of receiving any new information, which may have come to light about the offender, studying the prisoner's behavior in prison, and hearing personally from victims and criminal justice authorities as they review the case. Members also have the advantage of months and years of gathering information that truly assesses an offender's record and character.

If the Board determines parole is appropriate, an offender can serve a portion of the term in the community under supervision and the requirements set by the Board. If an offender violates the conditions, the Board can quickly return the offender to custody and require them to serve the remainder of the term in prison.

Courts have consistently ruled that parole in Montana is a **privilege and not a right** and the Board has been afforded very broad discretion in making decisions. The Board of Pardons and Parole is required to give offenders meaningful access to the members and, when parole is denied, the Board must issue a written decision informing the offender in what respects he or she falls short of qualifying for parole.



“Total Cases” – The number of total decisions made by the Board.

“Parole Hearings” – The personal appearance of an inmate before the Board for release consideration. This includes initial appearances and reappearances. The Board frequently uses video conference to conduct these hearings.

“Administrative Parole Reviews” – The informal administrative process conducted by a hearing panel via teleconference that entails a paper review to consider the progress and conduct of an inmate and to determine if further consideration is warranted.

“Parole Revocation” - An action by the Board to consider taking away a previously granted parole after probable cause has been determined that a parolee had violated the rule(s) of parole.

## HISTORY OF THE BOARD OF PARDONS AND PAROLE

Creation of the Board of Pardons (1889). The origins of the Board of Pardons and Parole can be traced to the 1889 Montana Constitution. Article VII, Section 9, of the constitution authorized the Governor to grant pardons, remit fines and forfeitures, and commute punishments subject to the approval of a Board of Pardons. The constitution directed the Legislature to provide for the appointment, composition, powers, and duties of the Board.

Parole by the Board of Prison Commissioners (1907). Sixteen years later, the Legislature provided for the parole of prisoners (Ch. 95, L. 1907). The 1907 legislation authorized the State Board of Prison Commissioners, consisting of the Governor, Secretary of State, and Attorney General, to parole an inmate of the Montana State Prison (MSP).

Parole and Executive Clemency Functions Merged (1955). For the next 48 years, a dual board system existed. The Board of Pardons reviewed Executive Clemency matters, while the State Board of Prison Commissioners handled paroles. In 1955, however, the functions of the two boards were combined and assigned to a reconstituted Board of Pardons (Ch. 153, L. 1955). The Board consisted of three members appointed by the Governor with the advice and consent of the Senate. Members served staggered six-year terms.

Board Transferred to Department of Institutions (1971). Under the 1971 Executive Reorganization Act, the Board of Pardons was transferred to the Department of Institutions (now called the Department of Corrections) for administrative purposes only. In addition, the position of State Director of Probation and Parole was renamed the Administrator of Probation and Parole (Ch. 272, L. 1971).

Change in Montana Code Annotated (1995).

- (A). The 1995 Legislature eliminated good time for the purposes of parole eligibility effective April 13, 1995, and entirely effective January 31, 1997. **Unless the court otherwise orders, all inmates will serve 25% of their sentence prior to becoming parole eligible and will serve 100% of their sentence to discharge.** The Legislature also eliminated the provision that requires parole appearance on a time sentence after 17½ years and required 30 years to be served on a life sentence. Offenders previously served approximately 15 to 18 years on a life term. Additionally, the 1995 Legislature eliminated the 120-day, early consideration and non-dangerous/dangerous designation. This applies to crimes committed **on or after April 13, 1995.**
- (B). The Board of Pardons was renamed the Board of Pardons **and Parole** because the majority of the Board's functions directly pertain to parole issues. (See Figure 1)

Changes in Montana Code Annotated (1999). The 1999 Legislature changed requirements of offenders to provide DNA samples to be released on parole. Additionally, the Legislature allowed the Court to commit an offender to the Department of Corrections for a period not more than 5 years, with the remainder suspended. The Legislature authorized the Board to release information and allow public records to be reviewed. The Board was also allowed to hold any parole hearing or revocation hearing via an interactive videoconference and allowed the holding of an administrative hearing via a telephone conference.

Changes in Montana Code Annotated (2003). The 2003 Legislature authorized the appointment of two member hearing panels which have the full authority and power of the Board to order the denial, grant, or revocation of parole. Additionally, two auxiliary members were added and all members are now required to receive training in American Indian culture and problems.

Changes in Montana Code Annotated (2005). The 2005 legislature significantly modified the Medical

Parole criteria.

Changes in Montana Code Annotated (2007). The 2007 Legislature eliminated the requirement that certain sex offenders who are sentenced to imprisonment in a state prison enroll in and complete the educational phase of sex offender treatment.

Changes in Administrative Rules of Montana (2010). The Board of Pardons and Parole revised its Administrative Rules of Montana and the rules were published in November, 2010. The new rules were amended to reflect current practices of the Board. The Board is requesting legislation generally revising the makeup, operations, and procedures of the Board (LC 0398).

## **CURRENT PAROLE BOARD MEMBERS**

<u>Name</u>	<u>Occupation</u>	<u>Original Appointment</u>	<u>Expires</u>
Michael McKee, Chair*	Retired	5-1-2007	1-1-2011
John Rex	CD Program Director	5-6-2005	1-1-2011
Margaret Bowman, Vice-Chair	Businesswoman	6-17-2004	1-1-2014
Darryl Dupuis	Retired	9-4-2003	1-1-2014
Teresa O'Connor	Attorney	3-30-2005	1-1-2013
John Ward	Businessman	3-10-2009	1-1-2013
Sam Lemaich	Retired	3-10-2009	1-1-2013

*\*Chairman Michael McKee served an additional 2 years as a Board member under the Martz Administration.*

Parole Board members serve staggered terms. The Governor appoints three members in January of the first year of the term. Two more members are appointed in January of the second year of the Governor's term. The remaining two members are appointed in January of the third year.

Margaret Bowman and Darryl Dupuis are enrolled tribal members. All members must receive training that addresses: the culture and problems of Montana tribes and reservations; statistical and comparative data regarding correctional populations; distinctions between urban and reservation populations; federal, state, and local community services available to paroled or discharged American Indian inmates; state and federal law and rules pertinent to board operations; offender pathology, treatment, supervision, and department of corrections organization.

MCA 2-15-2302, Board of Pardons and Parole-composition-allocation-quasi-judicial.

- (1) There is a Board of Pardons and Parole.
- (2) Members of the Board, including the auxiliary members, shall possess academic training which has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling. Related work experience in the areas listed can be substituted for these educational requirements.
- (3) The auxiliary members shall attend any meeting that a regular Board member is unable to attend and, at that time, have all the rights and responsibilities of a regular Board member.
- (4) The Board is a quasi-judicial body and is entitled to *quasi-judicial immunity* for acts performed within their official capacity.

## **LEGAL AUTHORITY OF BOARD OF PARDONS AND PAROLE**

### **LEGAL ADVISOR:**

46-23-105 MCA, 1999: The Board may appoint any qualified attorney or the Attorney General to act as its legal advisor and represent it at all proceedings whenever so requested by the Board.

### **INFORMATION FROM COURTS TO BOARD:**

46-23-106 MCA, 1999: It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the Board of Pardons and Parole statistical data in accordance with regulations issued by the Board regarding all dispositions of defendants whether found guilty or discharged.

### **AUTHORITY OF BOARD TO ADOPT RULES:**

46-23-218 MCA, 1991: The Board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings, and conditions to be imposed upon parolees.

The Montana Board of Pardons and Parole published updated revisions to the Administrative Rules of Montana in December 2010.

### **CONDITIONS OF PAROLE:**

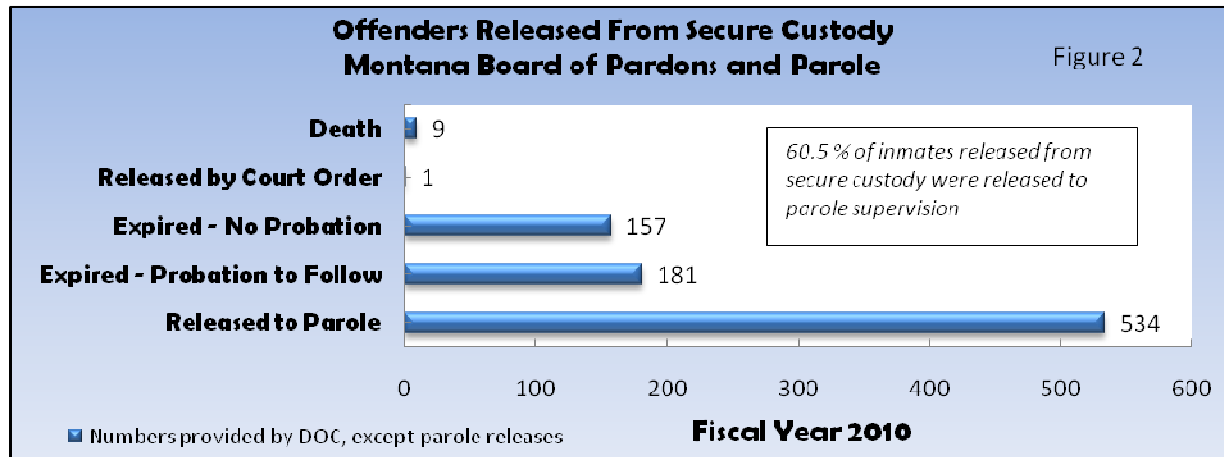
46-23-215 MCA, 1991: A prisoner, while on parole, remains in the legal custody of the institution from which the prisoner was released but is subject to the orders of the Board.

When an order for parole is issued, it must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition. (See Appendix for example of rules).

### **PROBATION AND CONDITIONAL RELEASE ARE NOT PAROLE:**

**Probation** is the suspension or deferral of a prison or Department commitment by the District Court. The District Court retains jurisdiction and the offender is placed under community supervision subject to the conditions imposed by the court. Probation officers in the community supervise these offenders and the District Court is responsible for revocation when necessary.

**Conditional Release** is a program implemented by the Department of Corrections (DOC). As an alternative to commitment to a prison, under 46-18-201, MCA, a District Judge may commit an offender to the DOC for up to five years with a recommendation for placement in an appropriate correctional facility or program. DOC commits entering prison from any source after February 1, 2003, can only be released from prison via a parole from the Montana Board of Pardons and Parole or by discharging their sentence. DOC commits who were in a pre-release center, boot camp, Connections Corrections, or on ISP prior to February 1, 2003, will be eligible for either parole or conditional release. After February 1, 2003, DOC commits admitted to the above community corrections programs that have not been to prison on their current sentence will not be eligible for parole and must be released on conditional release.



### **CONFIDENTIALITY OF RECORDS:**

46-23-110 MCA, 1999: The Board or a Board staff member determines whether any document in the Board file is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure. The Board may not withhold any more information than is required to protect these interests. The Board may charge a fee for copying and inspecting material and may limit the time and place that the records may be inspected or copied. A victim's statement may be kept confidential.

### **ADMINISTRATIVE ATTACHMENT:**

The Montana Legislature allocated the Board of Pardons and Parole to the Department of Corrections for administrative purposes only following the 1971 Executive Reorganization Act. However, the Board is autonomous, hires its own personnel, and sets its own policy independent of the Department of Corrections and without approval or control of the Department of Corrections. The Parole Board is not responsible for the care and custody of inmates nor is it in charge of supervising parole and probation officers. ***A separate and independent paroling authority is a significant factor for the following reasons:*** 1) The distribution of power within a correctional system must be distributed in a manner that will reduce the potential for misuse of power, a flexible system of punishment and checks and balances. 2) A citizen Board with members who have no vested interests in prison overcrowding can review offenders based on community safety and are not unduly influenced by the pressures of system management. 3) Corrections personnel due to the nature of their job could have the propensity to become overly involved in the lives of the offenders under their jurisdiction. Dealing with individuals on a daily basis, results in, the tendency to be influenced, either positively or negatively, by factors the individuals present, such as behavior and current progress. Board members focus on many areas in addition to adjustment, especially those with predictive significance such as criminal history, nature and severity of the offense, prior community adjustment, and victim or community input. 4) When the question of whether a parolee's behavior has deteriorated to the point where revocation is necessary, this decision must be subject to review by a body not involved in day-to-day supervision and system management.

Consequently, the separate and distinct roles of the corrections personnel and the parole board could conceivably result in periodic tension between the two agencies. However, this is one of the results of the checks and balance system; the ultimate purpose of which is public safety, victim concerns, successful inmate re-entry, and sensible use of state resources.

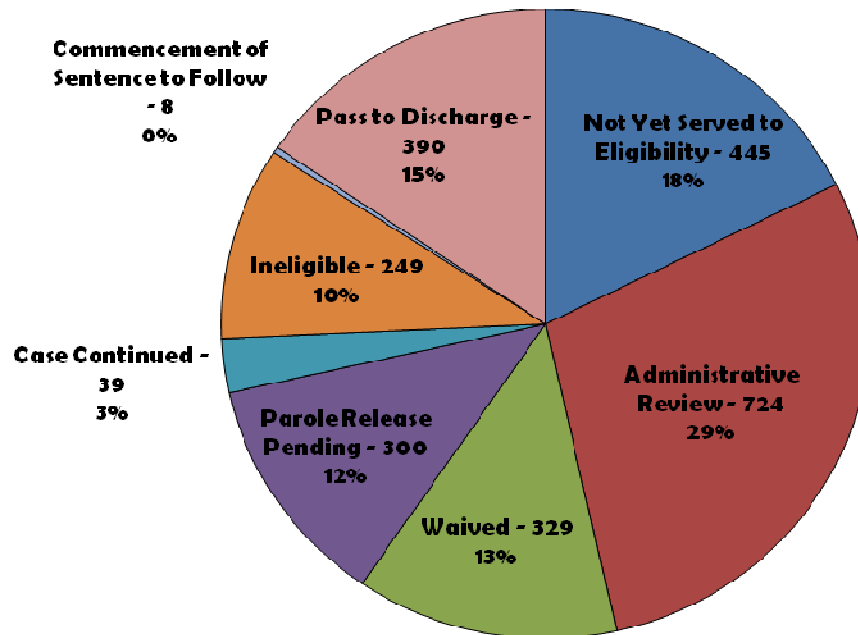
## Correctional Population in Secure Facilities

November 16, 2010

Total - 2,484

Figure 3

Montana Board of Pardons and Parole  
Correctional Population provided by DOC



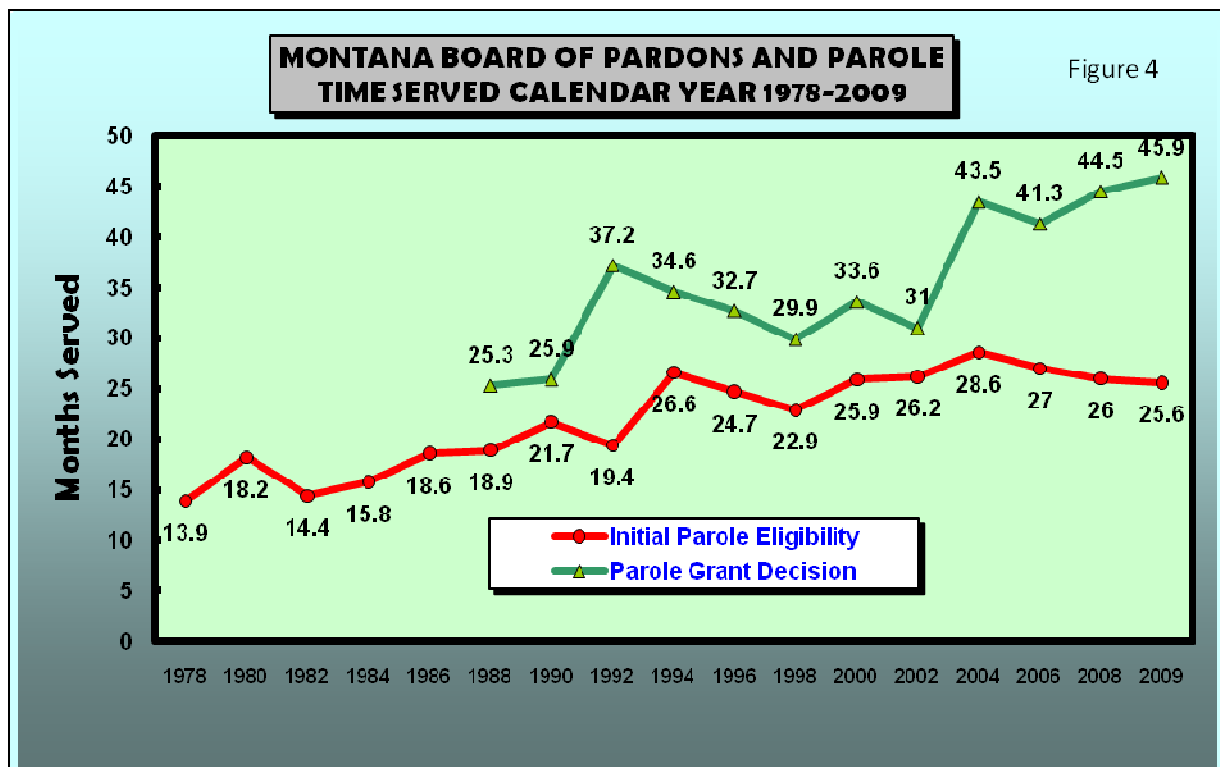
- Administrative Review includes all offenders who have been placed on Administrative Review status, scheduled for a reappearance at a later date, or allowed to request a reappearance upon completion of certain requirements set by the board.
- Parole Release Pending applies to all offenders who have been granted Parole but have not yet been released on parole.
- Ineligible includes all offenders who were ordered ineligible for parole by the sentencing court and all offenders who are required by the court to complete certain requirements prior to being considered eligible for parole.

## PAROLE PROCESS

### PAROLE ELIGIBILITY:

The minimum (initial parole eligibility) and maximum (sentence expiration) sentence lengths are set by the legislature and the district court. An offender committed to the director of the department of public health and human services pursuant to MCA 46-14-312 is only eligible for parole when the offender is placed at the Montana State Hospital or in a prison. An inmate **sentenced to Montana State Prison or classified and housed in a state prison** meeting the qualifications must be considered for parole. Parole is an earned privilege and may be granted only in the best interest of society and when the Board feels the offender is willing and capable of being a law-abiding citizen. Parole is not a reduction of a sentence or an award of clemency.

The Board staff administers a pre-parole program and participates in the initial classification of inmates. The Board staff personally advises the new inmates of the types of prison programs, treatment accomplishments, and behavior or conduct expected which may enhance the offender's possibility of a parole.



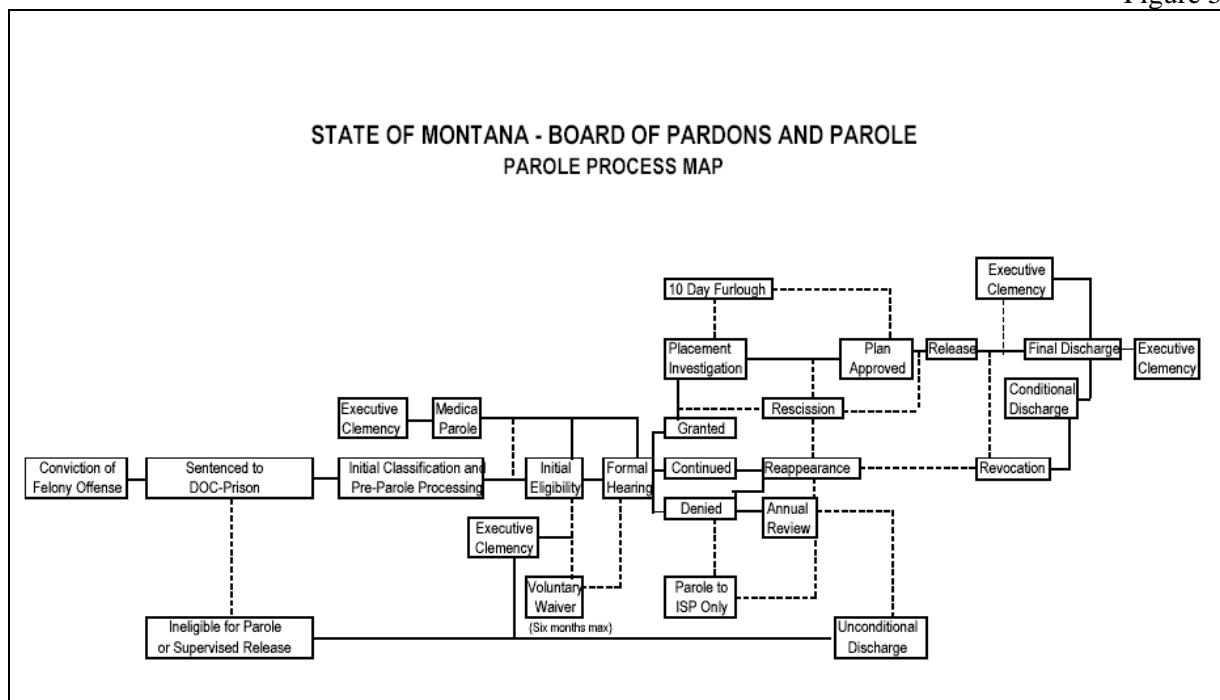


## **PROCESS:**

All calculations for parole eligibility are done by the Department of Corrections' Records Department. Each month, an initial parole eligibility list is sent to the Board. These offenders, along with any inmates offered reconsideration by the Board, are scheduled for a public hearing unless the offender has been deemed ineligible for parole consideration by court order. Cases are usually reviewed 60 days prior to the initial eligibility date. The inmate is notified regarding the date of the hearing. The inmate then will develop a parole plan to be presented to the Board. Board staff conducts a pre-parole school approximately 30 days in advance of the inmate's scheduled Board meeting to assist and facilitate the completion of this release plan. The offender will appear before the Board members, at which time oral testimony is taken from all interested parties and the members review the offender's records. In most cases, a written disposition is rendered immediately following the hearing. (Please see Appendix for examples of case dispositions).

All interviews and hearings before the Board are conducted informally under the direction of the Chair or a designee. An inmate who is not interested in parole release may waive the right to personally appear before the Board. The inmate will acknowledge that he/she is not interested in parole and the Board will render a decision based on the written record without their participation. Interested persons may appear before the Board but must notify the Board at least ten working days prior to the hearing. The Board has discretion in determining the number of persons who can attend the hearing and the Board generally excludes minors. To protect individual privacy rights, the Board may close a meeting to discuss confidential information.

Figure 5



### **MEDICAL PAROLE:**

In the Board's opinion, medical parole applications are most appropriate for offenders who have not served minimum time to be eligible for non-medical standard parole. Except for an offender under sentence of death or life imprisonment without the possibility of parole, the Board may release on medical parole a Montana offender confined in a prison or the state hospital, an offender whom the prison has placed in pre-release or other correctional program, or an offender for whom the court has restricted parole for a number of years but who has obtained the approval of the sentencing court. The Board, the department, the offender, or the offender's spouse, parent, child, grandparent, or sibling may submit an application for medical parole. The application must contain details of the offender's proposed living arrangement on medical parole, details of how the offender will acquire and pay for medical care while on medical parole, and a report of an examination and written diagnosis by a licensed physician which includes a detailed description of the offender's medical condition and the medical attention required to treat the condition, an assessment of the offender's likelihood of recovery, a description of the offender's most recent past medical condition and treatment, and an assessment of whether, to a reasonable degree of medical certainty, there is a high probability the offender's medical condition will cause death within six months or less. The diagnosis must be reviewed and accepted by the department's medical director or designee before the Board may hear the case for medical parole.

The Board requires as a condition of medical parole that the person agrees to placement in an environment chosen by the Department during the parole period, including but not limited to a hospital, nursing home, or family home. The Board may require as a condition of parole that the person agree to periodic examinations and diagnosis at the offender's expense. Reports of each examination and diagnosis must be submitted to the Board and Department by the examining physician. If either the Board or the Department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the Board may revoke the medical parole and return the person to the custody of the Department. A grant or denial of medical parole does not affect an offender's eligibility for nonmedical parole. The board will first consider an offender for nonmedical parole if the offender has reached parole eligibility. If the Board denies the application, the department may not accept another application regarding the same offender, unless the offender's medical condition has deteriorated to such a degree that the factors previously considered by the Board are affected. Revocation procedures for medical parole are the same as those for nonmedical parole and statutory provisions for nonmedical parole apply to medical parole. The Board is required to submit a report to the legislature regarding the outcome of any person released on medical parole, per MCA 46-23-210 (9).

### **NOTIFICATION AND COMMUNITY RESPONSE:**

The Board provides written notification of parole consideration to the sentencing judge(s), prosecuting attorneys, law enforcement officials from the county of commitment, probation and parole authorities, and victims of an offender. The Board actively solicits comments and testimony regarding the possible release of the offender. (See Appendix for example of Notice).

### **ALTERNATIVES TO PRISON PLACEMENT:**

The Treasure State Correctional Training Center, pre-release centers, and other appropriate correctional programs across the State are extensions of Montana State Prison. Offenders in residence at these facilities continue to be classified as inmates. Generally, for parole purposes, court ordered programs and Board directed programs obtained in these facilities are acceptable to the Board.

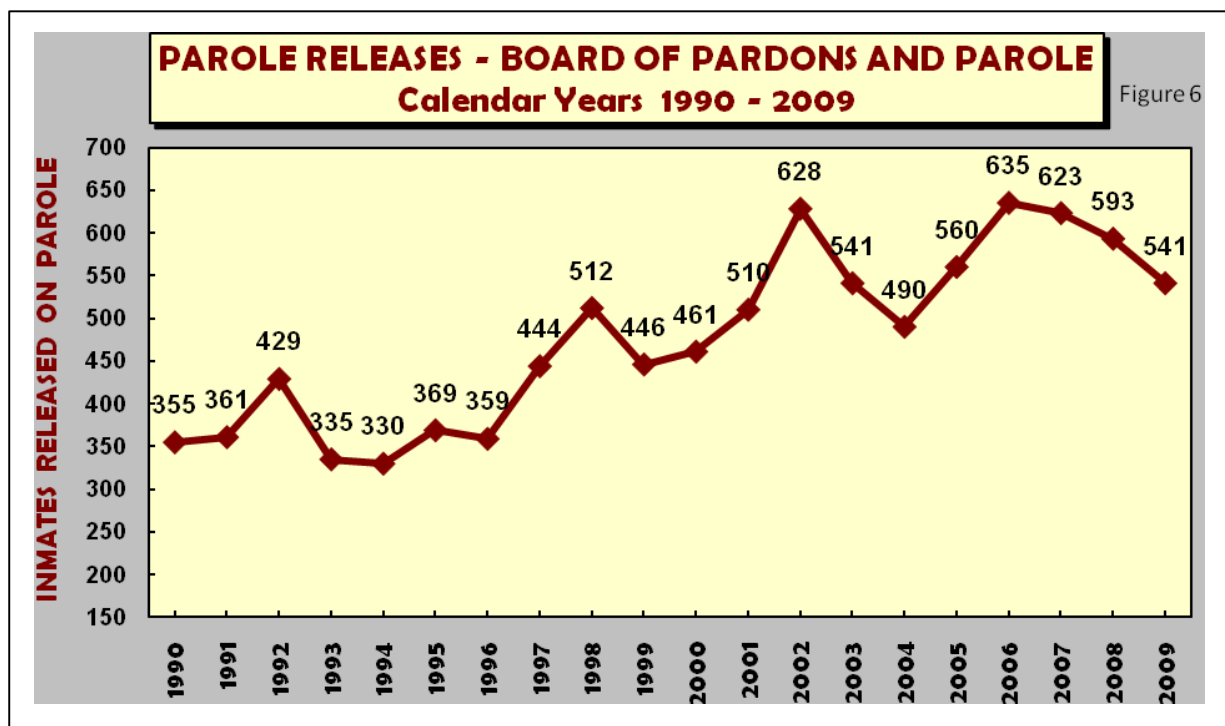
### **PRE-PAROLE INVESTIGATION:**

Before the Board interviews an inmate for parole consideration, it requests detailed reports and recommendations from prison counselors, Board staff, and, if a case warrants, from professional staff, such as psychologists. Sources of information include arrest and court records, pre-sentence investigations, and existing psychological evaluations and reports from any treatment programs an inmate may have attended. Also considered are institutional work and conduct records, rehabilitative efforts, and community response. This information is considered confidential criminal justice information. The Board views this information as advancing a penological interest and will review all requests to release this information individually.

### **PAROLE PLAN:**

A comprehensive parole plan must be prepared by each inmate for Board consideration. Each plan will include a suitable living situation, gainful employment, or training or a school program guaranteed by a responsible and reputable person, firm, or institution. All release plans will be approved by the local Adult Probation and Parole staff prior to an offender being released on parole.

To appear for an interview before the Board or prior to parole release, an inmate in secure custody must have a minimum of 120 days of disciplinary-free status. To appear for an interview before the Board or prior to parole release in a community-based facility, 90 days of disciplinary-free status is required.



**FACTORS IN PAROLE DECISIONS: (criteria)**

The Board has identified certain factors as significant when considering an offender for parole. They will determine if, in their opinion:

1. The inmate can be released without being a detriment to him/herself or community.
2. The best interests of society are furthered.
3. The inmate is able and willing to fulfill the obligations of a law-abiding citizen.
4. Continued correctional treatment would substantially enhance the inmate's capacity to lead a law-abiding life.

The Board will not parole an inmate if there is a substantial reason to believe the inmate will engage in further criminal conduct or will not conform to specific conditions of parole.

**CONSIDER THESE:****HISTORY**

1. Education, training, occupational skills, and employment history.
2. Past use of narcotics or habitual excessive use of alcohol.
3. Circumstances of the offense for which the inmate is serving a sentence.
4. Criminal records, including nature of crimes, recency, and frequency.
5. Behavior and attitude while previously supervised on probation or parole.

**PRISON RECORD**

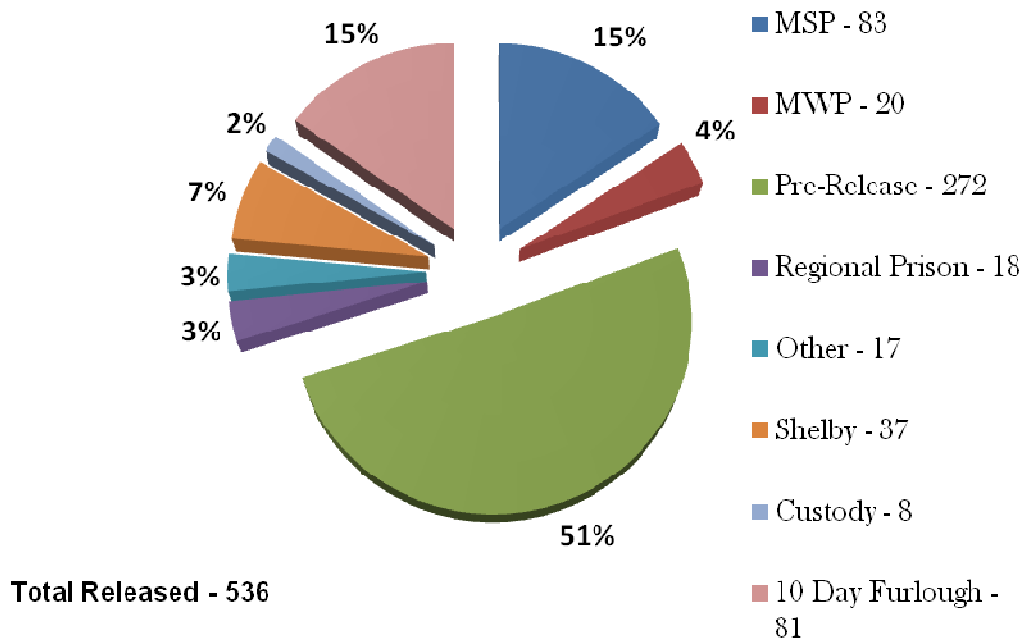
1. Attitude toward law and authority.
2. Institutional conduct, including disciplinary reports.
3. Work evaluations and work history.
4. Utilization of treatment opportunities.
5. Utilization of vocational and educational opportunities.
6. Maturity, stability, and behaviors consistent with the general population.
7. Noticeable attitude changes since incarceration.
8. Mental or physical makeup, for instance, physical and emotional status.
9. Risk Assessment Tool (excluding female offenders and those convicted of a sex offense or DUI)

**FORWARD VIEW**

1. Family status, including whether the offender's relatives or other close associates in the community display an interest.
2. Residence, neighborhood, or community of planned residence.
3. Adequacy of parole plans.
4. Availability of community resources and their value to the inmate.

## Montana Board of Pardons and Parole PAROLE RELEASE LOCATIONS Fiscal Year 2010

Figure 7

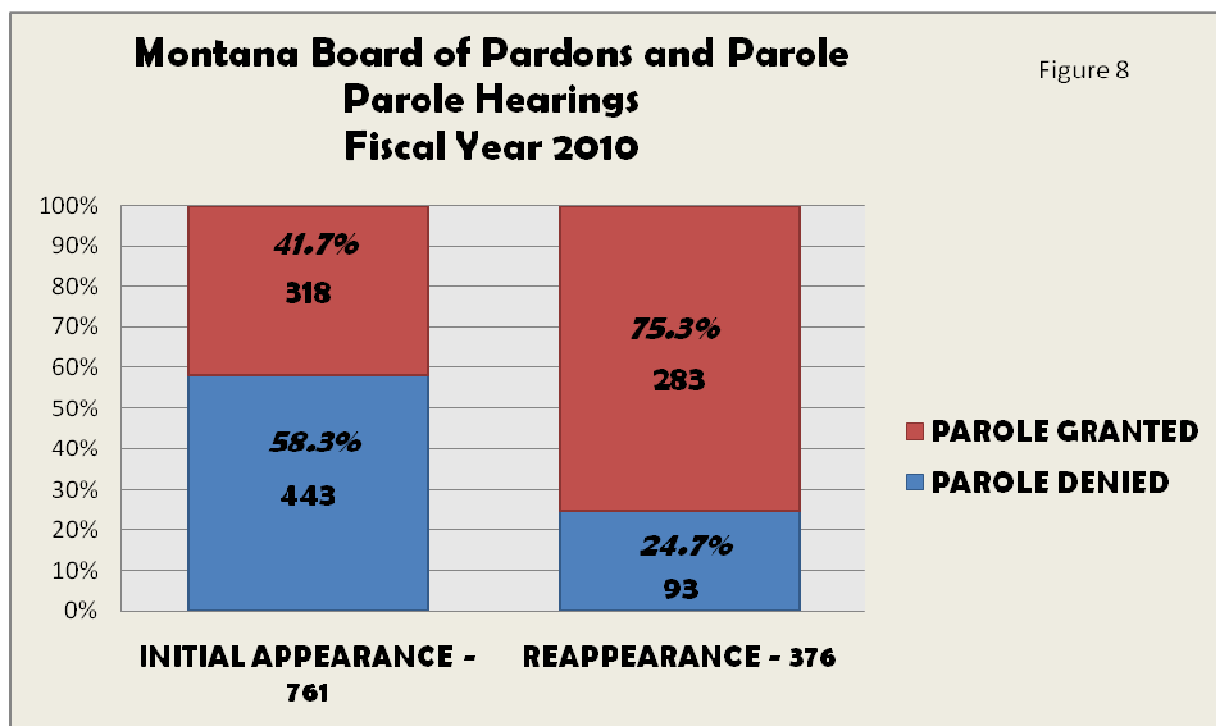


### **WAIVER:**

An inmate may voluntarily waive a parole hearing by notifying the Board in writing. However, a mandatory hearing will be scheduled within six months. Any inmate who has waived a Parole Board hearing may see the Board earlier by giving at least 30 days written notice. Additional waivers may be allowed under certain circumstances, but must be approved by the Board.

### **NOTIFICATION OF DECISION:**

All decisions issued from the Board are in writing and must be signed by at least two Board members. When an inmate has been denied parole, written notification will include the date of any future Board consideration. The disposition will include any special conditions or terms to be required by those granted parole. (See Appendix for example of dispositions).



#### **RESCISSION AND RELEASE DELAY:**

Parole may be withdrawn prior to release as a result of improper conduct or new evidence and information that were not available for the hearing at which parole was granted. The Board may delay parole release as a result of improper conduct or new evidence and information if rescission is not in order.

#### **PAROLE SUPERVISION:**

An inmate's parole is subject to all rules and conditions set by the Board and violations thereof subject the parolee to revocation and return to custody to serve the remainder of the sentence. Rules and conditions are stated in writing and are part of an agreement signed by the parolee. A parolee shall pay a supervisory fee for each month under supervision. A board hearing panel may reduce or waive the fee or suspend the monthly payment if payment would cause the parolee significant financial hardship. A Board hearing panel may order additional special conditions. Additionally, a hearing panel shall consider Department of Corrections' requests for special conditions. Any special condition imposed by the department must be approved by a board hearing panel. Special conditions must not be unrealistic or vague and must be reasonably related to the offender's crime, public safety, or the circumstances and rehabilitation of the offender. (See Appendix for an example of parole rules).

#### **10 DAY FURLOUGH:**

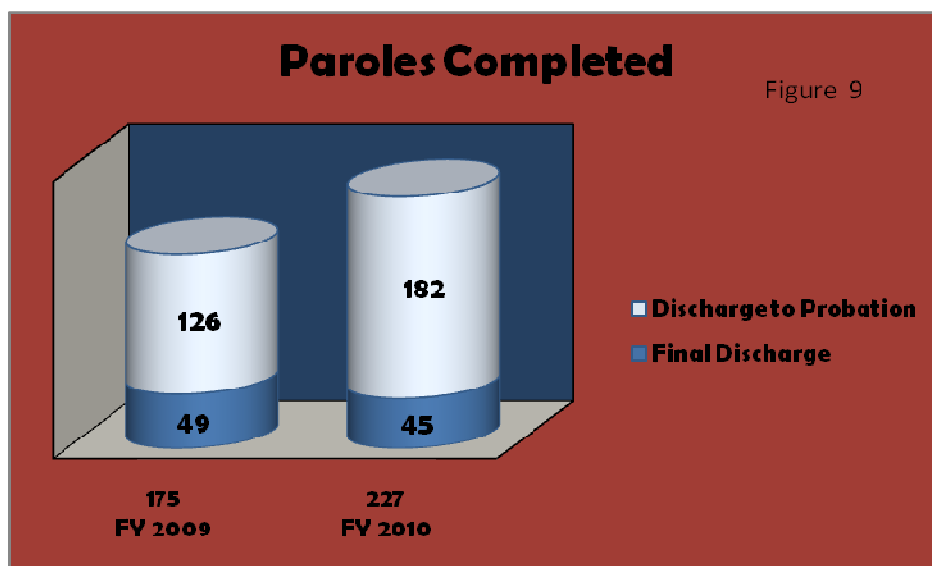
Upon receiving a parole from the Board, an inmate may request from the Board a furlough not to exceed two consecutive 10-day periods. The purpose of the furlough program is to afford an offender the opportunity to acquire suitable living arrangements, employment, or any condition that is difficult to fulfill while incarcerated. While on furlough the offender remains in the legal custody of the department and is subject to the department's furlough program rules, standard parole conditions, and any other special conditions recited by the hearing panel.

### **CONDITIONAL DISCHARGE FROM SUPERVISION:**

Upon recommendation of the supervising parole officer, a board hearing panel may conditionally discharge a parolee from parole supervision before the expiration of the sentence, if the panel determines that such conditional discharge is in the best interest of the parolee and society will not present an unreasonable risk of danger to society or the victim of the offense. However, the board may revoke a parole, even when the parolee is conditionally discharged from supervision if the parolee violates any laws or ordinances and/or conditions that the board has imposed upon the parolee's conditional discharge. After the parolee has served one year of active supervision, the parole officer will recommend conditional discharge, unless a reason exists to continue supervision. If a hearing panel grants a conditional discharge from supervision it must order the conditions the parolee must meet while on conditional discharge. At a minimum, the panel must order that the parolee report once a year, report any address or employment changes immediately to the parolee's supervising officer, and report any contacts with law enforcement. However, parole may be revoked if the parolee violates any condition the Board imposes. The parolee may then be returned to active supervision or custody to serve the remainder of the sentence. In Fiscal Year 2009 the Board did not grant any requests for Conditional Discharge from Supervision. In Fiscal Year 2010 the Board granted (5) requests for Conditional Discharges from Supervision.

### **FINAL DISCHARGE:**

When a person is released on parole, the projected date of discharge from parole supervision will be stated on the parole certificate. If all sentences have been completed, the person will receive written notice of discharge signed by the Governor and the Board of Pardons and Parole (no final discharge is issued if a probation term follows). With the exception of jury duty, upon termination of State supervision, the person is restored civil rights and full citizenship.



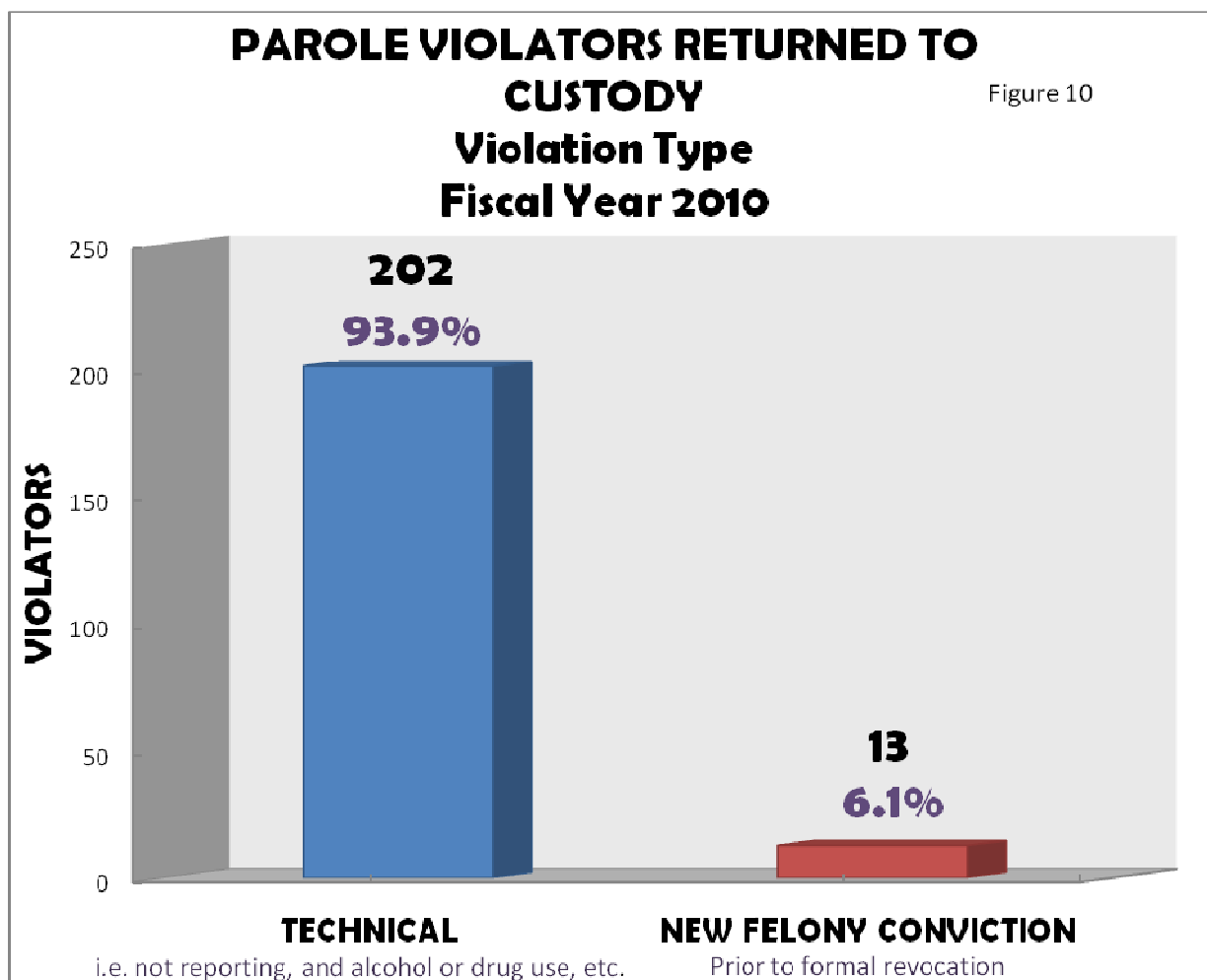
## **PAROLE REVOCATION**

### **REVOCATION ARREST:**

When a parolee has allegedly violated a condition of his release, the Department of Corrections may issue a warrant for the parolee's arrest.

### **ON-SITE HEARING:**

In most circumstances, an arrested parolee is afforded a preliminary hearing within a reasonable time at or near the place of the alleged violation. A parole officer and a hearing officer conduct this hearing. The independent hearing officer need not be a judicial officer. The purpose of the hearing is to determine whether there is probable cause to believe the parolee violated one or more parole conditions or whether the offender should be held in custody pending the Board's decision on revocation. If probable cause is found, the Board will schedule a formal revocation hearing within 90 days of the at the offender's return to custody. The parolee may waive the right to an on-site hearing but by doing so, the offender admits to the violations as outlined in the report of violation.



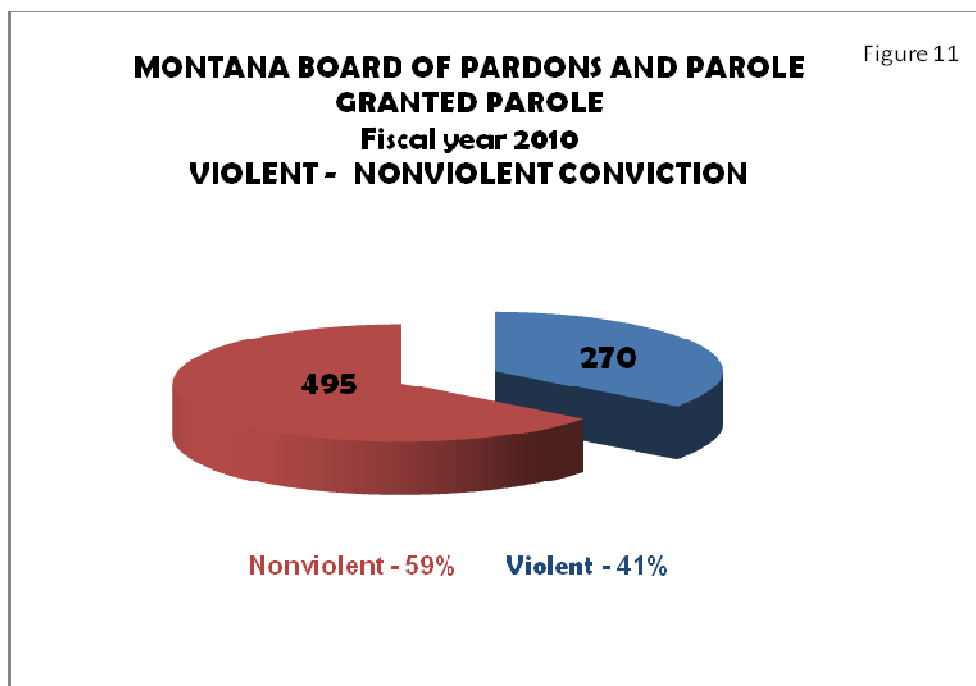
### **FINAL HEARING:**



A parolee may request a continuance of a formal revocation hearing for substantial reason. The parolee may be represented by council and have witnesses with testimony relating only to the charges of violation. The purpose of the full hearing is to make final decision on whether there is a violation of parole conditions and whether the violation warrants a return to custody and for how long. If a parolee admits to the violation, the parolee can waive the right to a hearing before the Board. The Board will make a final decision based on the record.

Revocation hearings are recorded. Following the decision, a written copy of the decision is given to the parolee in a timely manner. The Board decision is based on the reports of the supervising officer, the report of the on-site hearing (if there was one), and information and evidence presented at the hearing. The burden of proof is a preponderance of the evidence. Any parolee who commits a crime while on parole or conditional release and who is convicted and sentenced, serves the sentence consecutively with the remainder of the original term unless the court otherwise orders.

The Board will determine if dead time applies and how much is to be applied in individual cases. Dead time is that portion of time spent on parole (the time from the issuing of the parole violation warrant until the offenders' return to custody) that is not to be counted toward time served on the original sentence.



## EXECUTIVE CLEMENCY

There are three major kinds of Executive Clemency in Montana:

- (1) ***Pardon*** - a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.
- (2) ***Commutation*** - involves the mitigation of a criminal punishment through the substitution of a lesser sentence for a greater one.
- (3) ***Remission of Fines and Forfeitures***

Unless the board otherwise orders or there has been a substantial change in circumstances, as determined by the board, an offender whose application for Executive Clemency has been denied, may not reapply for Executive Clemency.

The legal effect of a commutation is quite different from that of a pardon. Commutation involves the mitigation of criminal punishment through substitution of a lesser sentence for a greater one.

The substitution of a lesser sentence for a greater one occurs in four principal contexts:

- (1) to make immediately eligible for parole those prisoners not yet eligible under the terms of their sentences;
- (2) to make eligible for parole those who were excluded from eligibility for parole under their original sentences;
- (3) to end lengthy parole, when the individual appears able to live without further supervision; and
- (4) to avoid the death penalty, by the substitution of life imprisonment.

Commutation may be granted conditionally; it is usually said that any conditions may be imposed that are legal, moral, and possible to perform. If the conditions are valid, a noncompliance may lead to the revocation of the commutation.

The members of the Board of Pardons and Parole are responsible for recommending Executive Clemency to the Governor and consider commutation of a sentence and pardon *extraordinary* remedies. A recommendation for Executive Clemency will be made only when an applicant is able to clearly demonstrate that exceptional and compelling circumstances of equity and justice exist.

A board hearing panel may recommend a pardon for an individual who:

- (1) can satisfactorily prove innocence of a crime for which the individual has served time;
- (2) submits newly discovered evidence showing complete justification of non-guilt on the part of the individual;
- (3) has demonstrated an extended period of exemplary performance;
- (4) the offender or applicant can satisfactorily prove extraordinary mitigating or extenuating circumstances exist.

A board hearing panel may recommend a commutation for an individual who:

- (1) can prove by overwhelming evidence that the individual is innocent of a crime for which the individual was convicted;
- (2) has demonstrated an extended period of exemplary performance;
- (3) submits evidence discovered subsequent to the conviction that clearly shows the individual was completely justified in committing the crime; or
- (4) can satisfactorily prove that further incarceration would be grossly unfair, that the death penalty should be avoided, or extraordinary mitigating or extenuating circumstances exist.

In weighing the evidence of exceptional and compelling circumstances presented by the applicant, clemency officials will investigate:

- (1) the nature of the crime, the attitude of the judge and the prosecuting attorney, the attitude of the

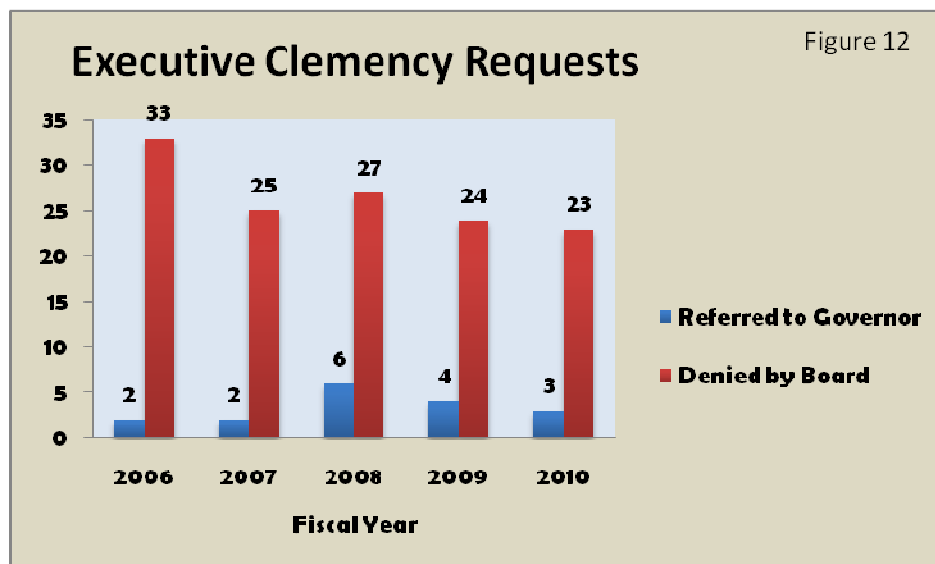
community toward the applicant, the attitude of the victim and victim's family, and a consideration of whether release would pose a threat to the public safety. The public safety determination overrides even the most substantial showing of exceptional or compelling circumstances.

- (2) relevant institutional, social, psychological, and psychiatric records of the applicant.
- (3) all parties who have entered a plea of guilty or who have been found guilty by a jury are to be deemed guilty. However, the Board may initiate an investigation into a case where there is offered substantial evidence showing innocence or complete justification on the part of the person convicted.

### **DECISION:**

If in the opinion of the hearing panel sufficient cause appears to conduct a hearing on the application, and in all cases in which the death penalty has been imposed, the panel will set a date for the hearing and order board staff to give notice of the hearing date as prescribed by law to all concerned including the application, law enforcement, the sentencing court, the county attorney in the county in which the crime was committed, and victims of the crime. The Board will hear all pertinent facts and information of the petitioner, the petitioner's counsel and witnesses, as well as any opponents to the petition, with a recording made thereof. Upon conclusion of the hearing, the Board will take the entire case under advisement and will forward a decision of recommendation to the Governor for final determination.

In cases in which the death penalty has not been imposed, if the hearing panel makes a recommendation that the governor grant clemency, it will within 30 days of the decision forward all relevant documents and a proposed executive order to the governor for the governor's final determination. If the panel does not recommend a grant of clemency, it will not forward the application to the governor. In cases in which the death penalty has been imposed, the Board will forward a decision of recommendation or denial to the Governor for final determination.



## **VICTIM SERVICES**

Although the Board had always been well aware of the trauma and potential for a myriad of feelings by

crime victims, the Board formally instituted the victim services program in 1997. The Board's Executive Director, Craig Thomas, administers the current program and Senior Parole Board Analyst Julie Thomas is the Victim Services Coordinator.

In July of 1997, the Board staff was instrumental in bringing a nationally renowned expert to Great Falls to speak about a program called "Promising Practices and Strategies for Victim Services in Corrections." The Board determined that more attention should be directed toward crime victims in Montana. The Legislature also recognized this fact and changed the statute to mandate crime victim participation in offender sentencing and also required that the criminal justice system notify victims, if they so desired, of the offender's movement within the system.

### **VICTIM NOTIFICATION:**

As described in 46-24-212, MCA, the Board must, **when requested** by a victim or victim's family, provide certain information about an offender. That includes the following:

- promptly inform the victim of the following information concerning a prisoner committing the offense: projected discharge and parole eligibility dates; actual date of the prisoner's release on parole, if reasonably ascertainable; time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the Board under 46-23-202, MCA; and the community in which the prisoner will reside after parole.
- promptly inform the victim of the occurrence of any of the following event concerning the prisoner: a decision of the Board of Pardons and Parole; a decision of the Governor to commute the sentence or to grant Executive Clemency; and a release from confinement and any conditions attached to the release

The Board informs the District Judge, county attorney, police department, sheriff's office, and local probation and parole office of an offender's scheduled appearance before the Board for parole consideration. The **victim(s) do have a responsibility to notify the Board** staff in writing that they would like to be kept informed of the offender's situation. This includes notifying the Board of any change in name, address, or telephone number. Once a victim or victim's family contacts the Board, the procedure that follows is implemented.

When a victim or witness requests notification of an offender's parole consideration, Board staff sends an information packet that lists the offender's parole eligibility date, tentative hearing date, and the sentence expiration date. This letter informs the victim/witness of their rights under Montana law. The information also informs the victim/witness of their right to request that their input be kept confidential. The Board makes every effort to insure confidentiality within the State of Montana's open meeting law. The packet includes a Board of Pardons and Parole Victim Rights Information pamphlet, a Department of Corrections VINE pamphlet, and a Department of Corrections CON pamphlet. The information contained in these pamphlets further explains the parole process and the rights that victims/witnesses have in regard to an offender. (Examples of the victim notification letter and the pamphlets can be found in the Appendix).

### **VICTIM PARTICIPATION:**

If a victim/witness wants to present testimony to the Board members considering an offender's case,

arrangements are made for their admittance into the correctional facility where the hearing will be held. Victims may be required, in accordance with Department of Corrections policy, to give their date of birth and social security number so that a background check can be completed. Any person with a criminal record or who is under the age of 18 may be restricted from the facility. Upon completion of the background check, the victim/witness is notified of the time scheduled for the offender's hearing. For offenders appearing at Montana State Prison in Deer Lodge, the victim/witness is directed to the Board's office for instructions on prison policies and procedure. Upon request, the Board's Victim Services Specialist accompanies them to the prison. The Victim Services Specialist is there to help the victim/witness understand the process and to answer any questions the victim/witness may have. When a disposition has been rendered in the offender's case, the Victim Services Specialist, upon request, contacts the victim/witness with the hearing results and again answers any questions that may arise.

The Board has received many positive comments regarding their services provided to the victims/witnesses. Following are examples of the positive feedback we have received:

*"We were allowed plenty of time to state what happened to our business and the impact it had on our lives and our family."*

*"I feel very comfortable with the opportunities that we are given input with regards to the parole hearings."*

*"We were treated with courtesy and respect. Do not envy people in these jobs. Know they have rules to follow."*

*"Very good aspect for input. Board was courteous, respectful, and interested in our testimony."*

In an effort to improve the services provided to victims, the Board of Pardons and Parole recently began soliciting feedback from victims about their experience with the parole process. A Victim Satisfaction Survey is randomly sent to victims who attend a parole hearing to provide input regarding parole consideration for their offender. (See Appendix for an example of the Victim Satisfaction Survey). We hope to use any comments or suggestions provided by victims to enhance the services we currently provide and possibly implement new services as necessary.

#### **OTHER VICTIM-RELATED EFFORTS AND POINTS OF INTEREST:**

In addition to the services our office provides directly to victims of offenders being considered for parole, Board staff also participated as a voting member on the Department of Corrections Victim Advisory Council prior to its disband due to budgeting constraints. Board staff collaborate on a continual basis with other corrections victim services personnel to provide a broad network of services, resources, and information to victims. Members of our Victim Services staff usually attend the biennial Crime Victim Fair to provide information about the parole process to victims, victim advocates, other corrections professionals, and the general public. The Victim Services Specialist regularly travels to various agencies and events, including the yearly Victim Advocate course at the Montana Law Enforcement Academy, to provide training on the parole process and the victim's invaluable role within that process.

#### **AMERICAN CORRECTIONAL ASSOCIATION (ACA) ACCREDITATION**

The 1999 Legislature authorized funding for the Board of Pardons and Parole to pursue ACA accreditation. The most significant purposes of the Association as outlined in its Constitution are:

- To promote the coordination of correctional organizations, agencies, programs, and services to reduce fragmentation and duplication of effort and increase the efficiency of correctional services on a national basis.
- To develop and maintain liaisons and a close working relationship in America with national, regional, state, and local associations, and agencies in the correctional, criminal justice, civic, and related fields for mutual assistance and the interchange of ideas and information, and to extend and strengthen cooperative working relationships with similar associations and agencies on the international level.
- To develop and promote effective standards for the care, custody, training, and treatment of offenders in all age groups and all areas of the correctional field: detention facilities and services, institutions, and other facilities for juvenile and adult offenders, probation, parole, community residential centers, and other community-based programs and services.
- To conduct studies, surveys, and program evaluations in the correctional field, and provide technical assistance to correctional organizations, departments, institutions, and services.
- To publish and distribute journals and other professional materials dealing with all types of correctional activities.
- To promote the professional development of correctional staff at all levels.

The Board was accredited in 2001, and found to be 97.3% compliant after the 2009 reaccreditation audit. The Montana Board of Pardons and Parole is one of only four accredited paroling authorities in the world. The visiting committee members for the Standards Compliance Reaccreditation Audit commented that *“throughout the audit, the team evaluated the overall quality of life at the agency. The audit team was impressed with the professionalism, commitment, and dedication of the entire staff of the Pardon and Parole Board. They are very supportive of the leadership of the agency and all are committed to the jobs they perform. There is a strong family type atmosphere and they work together very much as a team. The new office area provides adequate room to conduct everyday operation. Since the agency relocated there has been an updating of the computers and technology in general. Staff is awaiting the transition to electronic reports.”*

## **INFORMATION TECHNOLOGY UPDATES**

Board members have received laptop computers which allow them to access the most current and accurate information available through the Offender Management Information System. This access affords the Board members the opportunity to view all legal documents and to quickly research any discrepancies within the information provided to the Board. The vision of the Board is to implement a paperless system that allows for storage of all pertinent information and reports on the Offender Information Management System. Board members are now receiving monthly electronic reports on offenders as opposed to bulky and inconvenient hearing packets that were previously mailed via the postal service.